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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/556,125

11/09/2005

Edward C. Meagher

2897 US

4353

50855

7590

12/23/2008

Tyco Healthcare Group LP
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NORTH HAVEN, CT 06473

EXAMINER

WEEKS, GLORIA R

ART UNIT

PAPER NUMBER

3721

MAIL DATE

DELIVERY MODE

12/23/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/556,125	Applicant(s) MEAGHER, EDWARD C.	
	Examiner GLORIA R. WEEKS	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the amendment and remarks received on October 9, 2008.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 9, 2008 has been entered.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cummins (US 2004/0028502) in view of Hermes (USPN 5,282,829).

In reference to claims 1-8, Cummins discloses a surgical fastener comprising: upright leg 10; a deformable base leg 16 having a tissue piercing tip 18. Cummins does not disclose a capillary in the base leg of the surgical fastener. Hermes teaches a surgical fastener having an upright leg 5 and a base leg 3 having a tissue piercing tip 7, wherein the base leg has multiple rupturable capillary defining a reservoir that retains a bonding, medicinal or therapeutic agent,

wherein upon rupturing¹ of the capillary portion of the fastener, a liquid is released (column 5 lines 13-61; column 6 lines 18-33). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the surgical fastener of Cummins to have at least one rupturable capillary, since column 5 lines 2-12 states that such a modification provides focal application of a medicine for the purpose of treating a specific region of tissue, while also providing a drug delivery system to a wound for the purpose of speeding up the healing process of the wound.

In response to Applicant's arguments that the modification of the surgical fastener disclosed by Cummins in view of Hermes would compromise the integrity of the surgical fastener upon rupturing of the fastener, Examiner would like to reference figures 9 & 10 of Heremes, which illustrate strategic placement of the "rupturable" portion(s) of the fastener. Therefore, the fastener of Cummins in view of Heremes is capable of deforming without compromising the desired rupturing of the fastener.

Response to Arguments

5. Applicant's arguments filed October 9, 2008 have been fully considered but they are not persuasive.

6. With respect to claims 1 and 2, Applicant has argued that neither Cummins nor Hermes disclose a fastener that is "rupturable" to dispense a liquid upon deformation of the fastener. As previously declared, Examiner has broadly interpreted the term "rupturable", in the context of the fastener, to be describe a surface of the capillary which is capable of breaking open, which is found to be consistent with Applicants' specification. The point at which a surface of the capillary dissolves

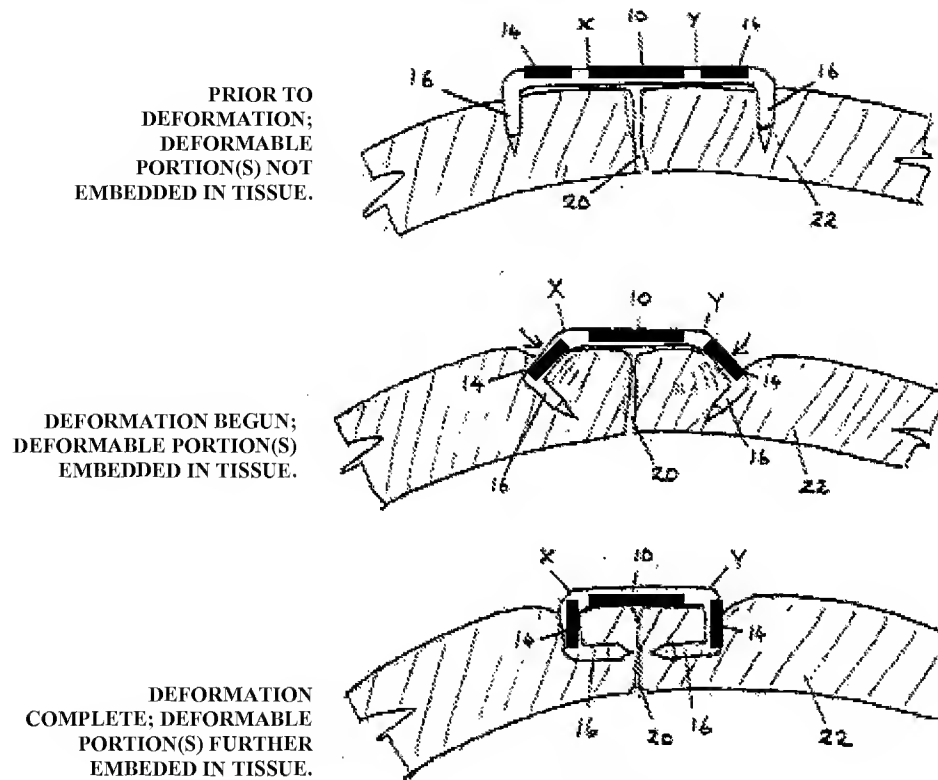
¹ Break open (American Heritage Dictionary)

to expose the liquid contents of the surgical staple is found to define the moment the capillary ruptures, as the capillary is now open to release the liquid contents.

A reference is not limited to what the patentees describe as their own invention(s) or to the problem(s) with which they are concerned; rather the reference is relevant for all it contains. Essentially, a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments. While Hermes discloses a preferred two-part fastener, column 1 lines 8-12 of Hermes states that the disclosure of Hermes is also applicable to staples. Herein lies the rationale that the staple disclosed by Cummins can be modified in view of the disclosure of Hermes. Thus, Examiner maintains the rejection of Applicants' invention over Cummins in view of Hermes.

Again, since Hermes teaches providing multiple capillaries in a single surgical staple, Examiner finds Hermes to reasonable suggest simultaneous release of plural capillaries in the surgical staple, wherein the capillaries do not rupture to permit the simultaneous release until the surgical staples have been positioned within tissue (Hermes – column 2 lines 16-24). The modification of Cummins in view of Hermes would disclose the rupture of the surgical fastener and the release of a liquid upon deformation of the surgical staple within a tissue. As illustrated below, the modified fastener of Cummins would include rupturable portions in the deformable legs of the fastener. Column 2 lines 16-24 of Heremes state that the rupturing of the fastener is contingent upon the exposure of the fastener to a particular environment. Upon deformation, the deformable legs of the fastener of Cummins are embedded in the tissue, such that the deformable legs are exposed to an environment chemically different than that of the deformable legs prior to

deformation. Therefore, the fastener of Cummins in view of Heremes is found to disclose Applicant's invention as claimed.



Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to GLORIA R. WEEKS whose telephone number is (571)272-4473. The examiner can normally be reached on M-F 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199

/Gloria R. Weeks/
Examiner, Art Unit 3721

/Rinaldi I Rada/
Supervisory Patent Examiner, Art Unit
3721

December 24, 2008